

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Robert M. Evans,)	C/A No. 5:17-cv-02175-TMC-KDW
)	
Plaintiff,)	
)	
vs.)	REPORT AND RECOMMENDATION
)	
Willie Eagleton;)	
Mr. Bethea;)	
Mrs. Graves,)	
Katurah Gause,)	
)	
Defendants.)	

This is a civil action filed pro se by a state prison inmate. Pursuant to 28 U.S.C. § 636(b)(1), and Local Civil Rule 73.02(B)(2)(e) (D.S.C.), this magistrate judge is authorized to review all pretrial matters in such pro se cases and to submit findings and recommendations to the district court. *See* 28 U.S.C. §§ 1915(e); 1915A (as soon as possible after docketing, district courts should review prisoner cases to determine whether they are subject to summary dismissal).

I. Factual Background

Robert M. Evans (“Plaintiff”) complains about the conditions of confinement at the RHU (Restrictive Housing Unit) at Evans Correctional Institution (“ECI”). Compl. 4, ECF No. 1. He alleges that he is given “no recreation, no air, no cleaning my cell,” and that he is not allowed to use the phone to call his lawyer or family. *Id.* at 6. Plaintiff also asserts that he is being denied access to court and that his Eighth and Fourteenth Amendment rights are being violated. *Id.* at 4. Plaintiff names four Defendants; however, none of the named Defendants is referenced in the body of the complaint despite the admonition on the pleading form that a pleader should

“[d]escribe how each defendant was personally involved in the alleged wrongful action” *Id.* at 5. Plaintiff alleges that he is suing each Defendant only in their official capacity. *Id.* at 2-3. Plaintiff seeks damages in the amount of \$500,000.00.

II. Standard of Review

Under established local procedure in this judicial district, a careful review has been made of Plaintiff’s pro se Complaint filed in this case. This review has been conducted pursuant to the procedural provisions of 28 U.S.C. §§ 1915, 1915A, and the Prison Litigation Reform Act of 1996, and in light of the following precedents: *Denton v. Hernandez*, 504 U.S. 25 (1992); *Neitzke v. Williams*, 490 U.S. 319, 324-25 (1989); *Haines v. Kerner*, 404 U.S. 519 (1972); *Nasim v. Warden, Md. House of Corr.*, 64 F.3d 951 (4th Cir. 1995); *Todd v. Baskerville*, 712 F.2d 70 (4th Cir. 1983); *Boyce v. Alizaduh*, 595 F.2d 948 (4th Cir. 1979).

Pro se complaints are held to a less stringent standard than those drafted by attorneys, *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978), and a federal district court is charged with liberally construing a complaint filed by a pro se litigant to allow the development of a potentially meritorious case. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Kerr v. Marshall Univ. Bd. of Governors*, 824 F.3d 62, 72 (4th Cir. 2016). When a federal court is evaluating a pro se complaint, the plaintiff’s allegations are assumed to be true. *De’Lonta v. Angelone*, 330 F.3d 630, 630 n.1 (4th Cir. 2003). Nevertheless, the requirement of liberal construction does not mean that this court can ignore a clear failure in the pleading to allege facts which set forth a claim currently cognizable in a federal district court. *Weller v. Dep’t of Soc. Servs.*, 901 F.2d 387, 391 (4th Cir. 1990). Even under this less stringent standard, the Complaint filed in this case is subject to summary dismissal under the provisions of 28 U.S.C. § 1915(e)(2)(B).

III. Discussion

Initial pleadings, whether submitted by attorneys or by pro se litigants, must contain sufficient “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *see also Hill v. Lappin*, 630 F.3d 468, 470-71 (6th Cir. 2010) (holding that *Iqbal* plausibility standard applies to dismissals of prisoner cases on initial review under 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2)(B)(i)); *Godbey v. Simmons*, No. 1:11cv704 (TSE/TCB), 2014 WL 345648, at *4 (E.D. Va. January 30, 2014) (“Whether filed by a pro se litigant or not, ‘claims brought in federal court are subject to the generally applicable standards set forth in the Supreme Court’s entire Rule 8(a) jurisprudence, including [*Bell Atlantic Corp. v. Twombly* and *Iqbal*.]”) (quoting from *Cook v. Howard*, 484 F. App’x 805, 810 (4th Cir. 2012)). Even though a pro se plaintiff’s pleadings are to be liberally construed, a pro se complaint must still contain sufficient facts “to raise a right to relief above the speculative level” and “state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. 544, 555, 570 (2007) (citations omitted); *see Slade v. Hampton Roads Reg’l Jail*, 407 F.3d 243, 248, 253-54 (4th Cir. 2005) (pro se pleading dismissal affirmed where insufficient facts alleged to put defendants on notice of or to support asserted due-process claim). The claims need not contain “detailed factual allegations,” but must contain sufficient factual allegations to suggest the required elements of a cause of action. *Twombly*, 550 U.S. at 555; *see also Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 256 (4th Cir. 2009) (examining sufficiency of factual allegations under *Iqbal* standards). “[A] formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555. Nor will mere labels and legal conclusions suffice. *Id.* Rule 8 of the Federal Rules of Civil Procedure

“demands more than an unadorned, the defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678.

Any litigant, including a pro se litigant like Plaintiff, must provide sufficient factual allegations supporting each element of the kind of legal claim he seeks to pursue in this court to allow this court to “draw the reasonable inference that [Defendants are] liable for the misconduct alleged.” *Id.*; see *Dupont de Nemours & Co.*, 324 F.3d 761, 764-65 (4th Cir. 2003) (a plaintiff must allege facts that support each element of the claim advanced); *Leblow v. BAC Home Loans Servicing, LP*, No. 1:12-CV-00246-MR-DLH, 2013 WL 2317726, at *3 (W.D.N.C. May 28, 2013) (same).

Plaintiff fails to state a plausible claim for relief against any of his four named Defendants because he sued them in their official capacities only, calling into play the application of the Eleventh Amendment to the United States Constitution. ECF No. 1 at 2-3. The Eleventh Amendment provides that “[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.” U.S. Const. amend. XI. The United States Supreme Court has long held that the Eleventh Amendment also precludes suits against a state by one of its own citizens. See *Edelman v. Jordan*, 415 U.S. 651, 662-63 (1974). This immunity extends not only to suits against a state per se, but also to suits against agents and instrumentalities of the state. *Cash v. Granville Cnty. Bd. of Ed.*, 242 F.3d 219, 222 (4th Cir. 2001). Because all Defendants were agents or employees of the State of South Carolina when acting in their official capacities, they are not “person[s]” within the meaning of 42 U.S.C. § 1983. *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1989) (“[N]either a state nor its officials acting in their official capacities are ‘persons’ under § 1983.”).

A state cannot, without its consent, be sued in a District Court of the United States by one of its own citizens upon the claim that the case is one that arises under the Constitution and laws of the United States. *Edelman*, 415 U.S. at 663. The State of South Carolina has not consented to be sued in this case. S.C. Code Ann. § 15-78-20(e). As an arm of the State, Defendants, in their official capacities, are immune from suit under the Eleventh Amendment. Accordingly, the Complaint should be summarily dismissed for lack of plausible official-capacity claims.

Furthermore, even if Plaintiff's Complaint were construed as also stating individual-capacity claims, it fails to state a plausible § 1983 claim¹ against any of the four named Defendants because the Complaint contains no allegations of any personal involvement of any Defendant in the conditions giving rise to Plaintiff's contentions. Here, Plaintiff indicates Defendant Eagleton is the ECI Warden, Defendant Bethea is with "Clinical Health," Defendant Graves, "IGC," and Defendant Gause is RHU Coordinator. Compl. 3. Nowhere, though, does he provide any detail as to how any of these individuals were "personally involved in the alleged wrongful action[.]" See Compl. 5 (section left blank).

To state a plausible § 1983 claim against any particular public official, a "causal connection" or "affirmative link" must exist between the conduct of which the plaintiff

¹ Plaintiff's claims for damages allegedly arising from the conditions of his confinement within South Carolina state prisons are properly considered by this court under its federal question jurisdiction pursuant to 42 U.S.C. § 1983. Section 1983 is the procedural mechanism through which Congress provided a private civil cause of action based on allegations of federal constitutional violations by persons acting under color of state law. *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 731-32 (1989). The purpose of § 1983 is to deter state actors from using the badges of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails. *Wyatt v. Cole*, 504 U.S. 158, 161 (1992) (citation omitted) (emphasis added). Section 1983 is not an independent source of substantive rights, but, instead, is simply a vehicle for vindicating preexisting constitutional and statutory rights. See *Graham v. Connor*, 490 U.S. 386, 393-94 (1989). No other viable basis for the exercise of this court's subject matter jurisdiction over Plaintiff's allegations is evident from the face of the Complaint.

complains and the official sued. *See Kentucky v. Graham*, 473 U.S. 159 (1985); *Evans v. Chalmers*, 703 F.3d 636, 654 (4th Cir. 2012). Receipt of or response to a grievance is not sufficient personal involvement in the grieved circumstances to impose § 1983 liability on a supervisory official. *Wright v. Collins*, 766 F.2d 841, 850 (4th Cir. 1985); *see Green v. Beck*, 539 F. App'x 78, 80 (4th Cir. 2013); *Miles v. Aramark Corr. Serv.*, 236 F. App'x 746, 751 (3d Cir. 2007); *Rogers v. United States*, 696 F. Supp. 2d 472, 488 (W.D. Pa. 2010).

Moreover, the fact that Plaintiff listed Defendants on his Complaint in the spaces provided for name and address information relating to Defendants does not save this Complaint where none of the named Defendants are mentioned anywhere in the body of the Complaint where Plaintiff was directed to state his claim, his injuries, and the relief he seeks. *See Potter v. Clark*, 497 F.2d 1206, 1207 (7th Cir. 1974) (“Where a complaint alleges no specific act or conduct on the part of the defendant and the complaint is silent as to the defendant except for his name appearing in the caption, the complaint is properly dismissed.”); *Newkirk v. Circuit Court of City of Hampton*, No. 3:14CV372-HEH, 2014 WL 4072212 (E.D. Va. Aug. 14, 2014) (complaint subject to summary dismissal where no factual allegations against named defendants within the body of the pleading); *see also Krych v. Hvass*, 83 F. App'x 854, 855 (8th Cir. 2003); *Black v. Lane*, 22 F.3d 1395, 1401 n.8 (7th Cir. 1994); *Walker v. Hodge*, 4 F.3d 991, * 2 n. 2 (5th Cir. 1993); *Banks v. Scott*, 3:13CV363, 2014 WL 5430987, at *2 (E.D. Va. Oct. 24, 2014). In the absence of substantive allegations of wrongdoing against the named Defendants, there is nothing from which this court can liberally construe any type of plausible cause of action arising from the Complaint against them. *See Cochran v. Morris*, 73 F.3d 1310 (4th Cir. 1996) (statute allowing dismissal of *in forma pauperis* claims encompasses complaints that are either legally or factually

baseless); *Weller v. Dep't of Social Servs.*, 901 F.2d at 389 n.2 (dismissal proper where there were no allegations to support claim).

Finally, even if the Complaint were liberally construed to state individual-capacity claims against any Defendant, Plaintiff's assertion of denial of access to court resulting from his alleged inability to use the telephone while housed in the ECI RHU fails to state a plausible § 1983 claim. First, there is no constitutional right to telephone use by prisoners. *See United States v. Alkire*, 82 F.3d 411 (4th Cir. 1996) (unpublished); *Paylor v. Lewis*, No. 5:12-CT-3103-FL, 2016 WL 1092612, at * 9 (E.D.N.C. March 21, 2016) (no constitutional right to unlimited telephone access); *Chesnut v. Brown*, No. 3:11-1227-RMG-JRM, 2012 WL 3230663, at * 3 (D.S.C. June 19, 2012) (same); *Coil v. Peterkin*, No. 1:07CV145, 2009 WL 3247848, at *10 (M.D.N.C. Oct. 5, 2009) (same), *aff'd*, 401 F. App'x 773 (4th Cir. 2010). Second, no plausible access-to-court claim is stated because Plaintiff fails to allege any actual injury from the restrictions placed on his phone usage. Plaintiff must show an actual injury to state a claim for denial of access to the courts. *See Rutland v. Dewitt, et al.*, No. 8:09-1753-SB-BHH, 2009 WL 2486342, at *3 (D.S.C. Aug. 11, 2009). It is well established that to state a claim for denial of meaningful access to the courts an inmate must allege specific injury resulting from the alleged denial. *Lewis v. Casey*, 518 U.S. 343, 349-52 (1996). The complaint must contain specific allegations as to the actual injury sustained. *Cochran v. Morris*, 73 F.3d 1310, 1317 (4th Cir. 1996); *Strickler v. Waters*, 989 F.2d 1375, 1384 (4th Cir. 1993). There are no allegations that indicate any hindrance with filing court documents or meaningfully participating in any court process in this or any other court. Plaintiff's minimal assertion that he is unable to talk to his family or attorney are not adequate to state a claim where there are no further facts showing that the inability to talk on the phone has resulted in the required actual injury.

IV. Recommendation

Accordingly, it is recommended that the district court dismiss the Complaint in this case *without prejudice*. See *Brown v. Briscoe*, 998 F.2d 201, 202-04 (4th Cir. 1993); *see also* 28 U.S.C. § 1915(e)(2)(B); 28 U.S.C. § 1915A (as soon as possible after docketing, district courts should review prisoner cases to determine whether they are subject to summary dismissal).

IT IS SO RECOMMENDED.

A handwritten signature in black ink, appearing to read "Kaymani D. West". The signature is fluid and cursive, with the first name "Kaymani" being more prominent than the last name "West".

September 11, 2017
Florence, South Carolina

Kaymani D. West
United States Magistrate Judge

**The parties are directed to note the important information in the attached
“Notice of Right to File Objections to Report and Recommendation.”**

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

**Robin L. Blume, Clerk
United States District Court
Post Office Box 2317
Florence, South Carolina 29503**

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).